

Senate File 2173

SENATE FILE _____
BY COMMITTEE ON BUSINESS
AND LABOR RELATIONS

(SUCCESSOR TO SSB 3098)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act concerning private sector employee drug testing relating
2 to authorized testing substances, confirmed positive test
3 results, and testing procedures, and providing an effective
4 date.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
6 TLSB 5375SV 80
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1 1 Section 1. Section 730.5, subsection 1, Code 2003, is
1 2 amended by adding the following new paragraph after paragraph
1 3 a:
1 4 NEW PARAGRAPH. aa. "Confirmed positive test result"
1 5 means, except for alcohol testing conducted pursuant to
1 6 subsection 7, paragraph "f", subparagraph (2), the results of
1 7 a blood, urine, or oral fluid test in which the level of
1 8 controlled substances or metabolites in the specimen analyzed
1 9 meets or exceeds nationally accepted standards for determining
1 10 detectable levels of controlled substances as adopted by the
1 11 federal substance abuse and health services administration.
1 12 If nationally accepted standards for oral fluid tests have not
1 13 been adopted by the federal substance abuse and health
1 14 services administration, the standards for determining
1 15 detectable levels of controlled substances for purposes of
1 16 determining a confirmed positive test result shall be the same
1 17 standard that has been established by the federal food and
1 18 drug administration for the measuring instrument used to
1 19 perform the oral fluid test.

1 20 Sec. 2. Section 730.5, subsection 1, paragraph j, Code
1 21 2003, is amended to read as follows:

1 22 j. "Sample" means such sample from the human body capable
1 23 of revealing the presence of alcohol or other drugs, or their
1 24 metabolites, which shall include only urine, saliva, breath,
1 25 and blood. However, sample does not mean blood except as

1 26 authorized pursuant to subsection 7, paragraph "l".

1 27 Sec. 3. Section 730.5, subsection 7, paragraph a, Code
1 28 2003, is amended to read as follows:

1 29 a. The collection of samples shall be performed under
1 30 sanitary conditions and with regard for the privacy of the
1 31 individual from whom the specimen is being obtained and in a
1 32 manner reasonably calculated to preclude contamination or
1 33 substitution of the specimen. If the sample collected is
1 34 urine, procedures shall be established to provide for
1 35 individual privacy in the collection of the sample unless
2 1 there is a reasonable suspicion that a particular individual
2 2 subject to testing may alter or substitute the urine specimen
2 3 to be provided, or has previously altered or substituted a
2 4 urine specimen provided pursuant to a drug or alcohol test.
2 5 For purposes of this paragraph, "individual privacy" means a
2 6 location at the collection site where urination can occur in
2 7 private, which has been secured by visual inspection to ensure
2 8 that other persons are not present, which provides that
2 9 undetected access to the location is not possible during
2 10 urination, and which provides for the ability to effectively
2 11 restrict access to the location during the time the specimen
2 12 is provided. If an individual is providing a urine sample and
2 13 collection of the urine sample is directly monitored or
2 14 observed by another individual, the individual who is directly
2 15 monitoring or observing the collection shall be of the same
2 16 gender as the individual from whom the urine sample is being
2 17 collected.

2 18 Sec. 4. Section 730.5, subsection 7, paragraph b, Code
2 19 2003, is amended to read as follows:

2 20 b. Sample collection Collection of a urine sample for
2 21 testing of current employees, ~~except for the collection of a~~
~~2 22 sample for alcohol testing conducted pursuant to paragraph~~
2 23 "f", subparagraph (2), shall be performed so that the specimen
2 24 is split into two components at the time of collection in the
2 25 presence of the individual from whom the sample or specimen is
2 26 collected. The second portion of the specimen or sample shall
2 27 be of sufficient quantity to permit a second, independent
2 28 confirmatory test as provided in paragraph "i". ~~If the~~
~~2 29 specimen is urine, the~~ The sample shall be split such that the
2 30 primary sample contains at least thirty milliliters and the
2 31 secondary sample contains at least fifteen milliliters. Both
2 32 portions of the sample shall be forwarded to the laboratory
2 33 conducting the initial confirmatory testing. In addition to
2 34 any requirements for storage of the initial sample that may be
2 35 imposed upon the laboratory as a condition for certification
3 1 or approval, the laboratory shall store the second portion of
3 2 any sample until receipt of a confirmed negative test result
3 3 or for a period of at least forty-five calendar days following
3 4 the completion of the initial confirmatory testing, if the
3 5 first portion yielded a confirmed positive test result.

3 6 Sec. 5. Section 730.5, subsection 7, paragraph f,
3 7 unnumbered paragraph 1, Code 2003, is amended to read as
3 8 follows:

3 9 Drug or alcohol testing shall include confirmation of any
3 10 initial positive test results. An employer may take adverse
3 11 employment action, including refusal to hire a prospective
3 12 employee, based on a confirmed positive ~~drug or alcohol test~~
3 13 result for drugs or alcohol.

3 14 Sec. 6. Section 730.5, subsection 7, paragraph f, Code
3 15 2003, is amended by adding the following new subparagraph:

3 16 NEW SUBPARAGRAPH. (3) Notwithstanding any provision of
3 17 this section to the contrary, collection of an oral fluid
3 18 sample for testing shall be performed in the presence of the
3 19 individual from whom the sample or specimen is collected. The
3 20 specimen or sample shall be of sufficient quantity to permit a
3 21 second, independent, confirmatory test as provided in
3 22 paragraph "i". In addition to any requirement for storage of
3 23 the initial sample that may be imposed upon the laboratory as
3 24 a condition for certification or approval, the laboratory
3 25 shall store the unused portion of any sample until receipt of
3 26 a confirmed negative test result or for a period of at least
3 27 forty-five calendar days following the completion of the
3 28 initial confirmatory testing, if the portion yielded a
3 29 confirmed positive test result.

3 30 Sec. 7. Section 730.5, subsection 7, paragraph i, Code
3 31 2003, is amended to read as follows:

3 32 i. (1) If a confirmed positive ~~drug or alcohol test~~
3 33 result for drugs or alcohol for a current employee is reported
3 34 to the employer by the medical review officer, the employer
3 35 shall notify the employee in writing by certified mail, return
4 1 receipt requested, of the results of the test, the employee's
4 2 right to request and obtain a confirmatory test of the second
4 3 sample collected pursuant to paragraph "b" at an approved
4 4 laboratory of the employee's choice, and the fee payable by
4 5 the employee to the employer for reimbursement of expenses
4 6 concerning the test. The fee charged an employee shall be an
4 7 amount that represents the costs associated with conducting
4 8 the second confirmatory test, which shall be consistent with
4 9 the employer's cost for conducting the initial confirmatory
4 10 test on an employee's sample. If the employee, in person or
4 11 by certified mail, return receipt requested, requests a second
4 12 confirmatory test, identifies an approved laboratory to
4 13 conduct the test, and pays the employer the fee for the test
4 14 within seven days from the date the employer mails by
4 15 certified mail, return receipt requested, the written notice
4 16 to the employee of the employee's right to request a test, a
4 17 second confirmatory test shall be conducted at the laboratory
4 18 chosen by the employee. The results of the second
4 19 confirmatory test shall be reported to the medical review
4 20 officer who reviewed the initial confirmatory test results and
4 21 the medical review officer shall review the results and issue
4 22 a report to the employer on whether the results of the second
4 23 confirmatory test confirmed the initial confirmatory test as
4 24 to the presence of a specific drug or alcohol. If the results
4 25 of the second test do not confirm the results of the initial
4 26 confirmatory test, the employer shall reimburse the employee
4 27 for the fee paid by the employee for the second test and the
4 28 initial confirmatory test shall not be considered a confirmed
4 29 positive ~~drug or alcohol test result for drugs or alcohol~~ for
4 30 purposes of taking disciplinary action pursuant to subsection

4 31 10.

4 32 (2) If a confirmed positive ~~drug or alcohol~~ test result
4 33 for drugs or alcohol for a prospective employee is reported to
4 34 the employer by the medical review officer, the employer shall
4 35 notify the prospective employee in writing of the results of
5 1 the test, of the name and address of the medical review
5 2 officer who made the report, and of the prospective employee's
5 3 right to request records under subsection 13.

5 4 Sec. 8. Section 730.5, subsection 9, paragraph b, Code
5 5 2003, is amended to read as follows:

5 6 b. The employer's written policy shall provide uniform
5 7 requirements for what disciplinary or rehabilitative actions
5 8 an employer shall take against an employee or prospective
5 9 employee upon receipt of a confirmed positive ~~drug or alcohol~~
5 10 test result for drugs or alcohol or upon the refusal of the
5 11 employee or prospective employee to provide a testing sample.
5 12 The policy shall provide that any action taken against an
5 13 employee or prospective employee shall be based only on the
5 14 results of the drug or alcohol test. The written policy shall
5 15 also provide that if rehabilitation is required pursuant to
5 16 paragraph "g", the employer shall not take adverse employment
5 17 action against the employee so long as the employee complies
5 18 with the requirements of rehabilitation and successfully
5 19 completes rehabilitation.

5 20 Sec. 9. Section 730.5, subsection 10, paragraph a,
5 21 unnumbered paragraph 1, Code 2003, is amended to read as
5 22 follows:

5 23 Upon receipt of a confirmed positive ~~drug or alcohol~~ test
5 24 result for drugs or alcohol which indicates a violation of the
5 25 employer's written policy, or upon the refusal of an employee
5 26 or prospective employee to provide a testing sample, an
5 27 employer may use that test result or test refusal as a valid
5 28 basis for disciplinary or rehabilitative actions pursuant to
5 29 the requirements of the employer's written policy and the
5 30 requirements of this section, which may include, among other
5 31 actions, the following:

5 32 Sec. 10. Section 730.5, subsection 10, paragraph b, Code
5 33 2003, is amended to read as follows:

5 34 b. Following a drug or alcohol test, but prior to receipt
5 35 of the final results of the drug or alcohol test, an employer
6 1 may suspend a current employee, with or without pay, pending
6 2 the outcome of the test. An employee who has been suspended
6 3 shall be reinstated by the employer, with back pay, and
6 4 interest on such amount at eighteen percent per annum
6 5 compounded annually, if applicable, if the result of the test
6 6 is not a confirmed positive ~~drug or alcohol~~ test result for
6 7 drugs or alcohol which indicates a violation of the employer's
6 8 written policy.

6 9 Sec. 11. EFFECTIVE DATE. This Act, being deemed of
6 10 immediate importance, takes effect upon enactment.

6 11 SF 2173

6 12 ec/cc/26